

1 AN ACT concerning liability for the provision of health
2 care.

3 Be it enacted by the People of the State of Illinois,
4 represented in the General Assembly:

5 Section 1. Short title. This Act may be cited as the
6 Health Care Entity Liability Act.

7 Section 5. Definitions. In this Act:

8 "Appropriate and medically necessary" means the standard
9 for health care services as determined by physicians and
10 health care providers in accordance with the prevailing
11 practices and standards of the medical profession and
12 community.

13 "Enrollee" means an individual who is enrolled in a
14 health care plan, including covered dependents.

15 "Health care plan" means any plan whereby any person
16 undertakes to provide, arrange for, pay for, or reimburse any
17 part of the cost of any health care services.

18 "Health care provider" means a person or entity as
19 defined in Section 2-1003 of the Code of Civil Procedure.

20 "Health care treatment decision" means a determination
21 made when medical services are actually provided by the
22 health care plan and a decision that affects the quality of
23 the diagnosis, care, or treatment provided to the plan's
24 insureds or enrollees.

25 "Health insurance carrier" means an authorized insurance
26 company that issues policies of accident and health insurance
27 under the Illinois Insurance Code.

28 "Health maintenance organization" means an organization
29 licensed under the Health Maintenance Organization Act.

30 "Managed care entity" means any entity that delivers,
31 administers, or assumes risk for health care services with

1 systems or techniques to control or influence the quality,
2 accessibility, utilization, or costs and prices of those
3 services to a defined enrollee population, but does not
4 include an employer acting on behalf of its employees or the
5 employees of one or more subsidiaries or affiliated
6 corporations of the employer.

7 "Ordinary care" means, in the case of a health insurance
8 carrier, health maintenance organization, or managed care
9 entity, that degree of care that a health insurance carrier,
10 health maintenance organization, or managed care entity of
11 ordinary prudence would use under the same or similar
12 circumstances. In the case of a person who is an employee,
13 agent, ostensible agent, or representative of a health
14 insurance carrier, health maintenance organization, or
15 managed care entity, "ordinary care" means that degree of
16 care that a person of ordinary prudence in the same
17 profession, specialty, or area of practice as such person
18 would use in the same or similar circumstances.

19 "Physician" means: (1) an individual licensed to practice
20 medicine in this State; (2) a professional association,
21 professional service corporation, partnership, medical
22 corporation, or limited liability company, entitled to
23 lawfully engage in the practice of medicine; or (3) another
24 entity wholly owned by physicians.

25 Section 10. Duty of care; liability; applicability.

26 (a) A health insurance carrier, health maintenance
27 organization, or other managed care entity for a health care
28 plan has the duty to exercise ordinary care when making
29 health care treatment decisions and is liable for damages for
30 harm to an insured or enrollee proximately caused by its
31 failure to exercise such ordinary care.

32 (b) A health insurance carrier, health maintenance
33 organization, or other managed care entity for a health care

1 plan is also liable for damages for harm to an insured or
2 enrollee proximately caused by the health care treatment
3 decisions made by its:

4 (1) employees;

5 (2) agents;

6 (3) ostensible agents; or

7 (4) representatives who are acting on its behalf
8 and over whom it has the right to exercise influence or
9 control or has actually exercised influence or control
10 that results in the failure to exercise ordinary care.

11 (c) The standards in subsections (a) and (b) create no
12 obligation on the part of the health insurance carrier,
13 health maintenance organization, or other managed care entity
14 to provide to an insured or enrollee treatment that is not
15 covered by the health care plan of the entity.

16 (d) A health insurance carrier, health maintenance
17 organization, or managed care entity may not remove a
18 physician or health care provider from its plan or refuse to
19 renew the physician or health care provider with its plan for
20 advocating on behalf of an enrollee for appropriate and
21 medically necessary health care for the enrollee.

22 (e) A health insurance carrier, health maintenance
23 organization, or other managed care entity may not enter into
24 a contract with a physician, hospital, or other health care
25 provider or pharmaceutical company which includes an
26 indemnification or hold harmless clause for the acts or
27 conduct of the health insurance carrier, health maintenance
28 organization, or other managed care entity. Any such
29 indemnification or hold harmless clause in an existing
30 contract is hereby declared void.

31 (f) Nothing in any law of this State prohibiting a
32 health insurance carrier, health maintenance organization, or
33 other managed care entity from practicing medicine or being
34 licensed to practice medicine may be asserted as a defense by

1 the health insurance carrier, health maintenance
2 organization, or other managed care entity in an action
3 brought against it pursuant to this Section or any other law.

4 (g) In an action against a health insurance carrier,
5 health maintenance organization, or managed care entity, a
6 finding that a physician or other health care provider is an
7 employee, agent, ostensible agent, or representative of the
8 health insurance carrier, health maintenance organization, or
9 managed care entity shall not be based solely on proof that
10 the person's name appears in a listing of approved physicians
11 or health care providers made available to insureds or
12 enrollees under a health care plan.

13 (h) This Act does not apply to workers' compensation
14 insurance coverage subject to the Workers' Compensation Act.

15 (i) This Act applies only to causes of action that
16 accrue on or after the effective date of this Act.

17 (j) Before bringing an action under this Section, a
18 person must, to the extent applicable, exercise any appeal
19 and review procedures available under the Managed Care Reform
20 and Patient Rights Act.

21 Section 15. Determination of medical necessity;
22 liability.

23 (a) The determination of whether a procedure or
24 treatment is medically necessary must be made by a physician.

25 (b) If the physician determines that a procedure or
26 treatment is medically necessary, the health care plan must
27 pay for the procedure or treatment.

28 Section 99. Effective date. This Act takes effect upon
29 becoming law.